CHAPTER TWO

The Abolition of Slavery in Tunisia (1846)[1]

A study into its historical backgrounds and its juridico-theological legitimization

Those your right hands own
Who seek emancipation, contract with
them accordingly, if you know some good in them;
and give them the wealth of God
that He has given you.[2]

Introduction

In January 1846 Aḥmad Bey, the tenth Ḥusaynīd ruler (1837-1855) promulgated a decree to abolish (black) slavery in his country. With this decision Tunisia became the first Muslim country to break with an institution taken for granted since times immemorial. An institution, moreover, that since the advent of Islam could be approved of with an appeal on the Qur'ān. The black slave was a common phenomenon in Tunisia's households, innumerable black slaves swarmed the Bey's palaces …. How did Aḥmad Bey come to his decision?
Brunschvig in his often quoted article suggests that this is an obvious case of European pressure:

> Although Islam, in teaching and in actuality, has favoured the emancipation of slaves, it was only under an overwhelming foreign influence that it began, about a hundred years ago, an evolution in doctrine and in practice towards the total suppression of slavery, its abolition in law and custom. (…) Here we have one of the most typical examples of the transformation that the Muslim world has undergone, through European pressure or example, from the mid-nineteenth century down to our own day.[3]

Whether 'overwhelming foreign influence' was a decisive factor in all or most cases of abolition, is a question that would require a much broader study. It was certainly a factor in some abolition decrees, like the ones in Egypt and in the Ottoman Empire, where abolitionary measures became a stake in negotiations with England and other, far greater political interests were involved.

The question may be raised whether in this early Tunisian case strong foreign pressure was an issue. Other considerations regarding this early social reform playing their role at Aḥmad Bey's court cannot be excluded beforehand. Did, for instance, the Tunisian population in any

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[1] This chapter has been published in a shorter version in *Sharqiyyāt. Journal of the Dutch Association for Middle Eastern and Islamic Studies*. 1998 (2), 105, and in *Revue d'Histoire Maghrébine*. 2000 (99/100),449, in English, with a summary in Arabic.

[2] Those your right hands own (*mā malakat aymānukum*), standard expression for slaves. *Sūra* 24, 33(33).

[3] R. Brunschvig, *'Abd*. In: EI_2 I, 36.

way appeal to its ruler for the abolition of the institute? Were there feelings of discontent and resistance under the black slaves' population? Or, was the abolition decree a humanitarian gesture by the Bey, wishing to tune in with the spirit of modern times? How did Tunisia position itself in relation to the great political powers in the Mediterranean − France, England, the Ottoman Empire? Did the justification presented reflect in any way the presumed foreign influence?

This chapter is an investigation into these other considerations. Most of all, however, it will serve to examine the theological justifications given to the beylical decree by the two Tunisian muftis and others. How could what had been permitted by law for centuries, suddenly be forbidden? Was to prohibit what God had permitted not just as unlawful as to permit what God had prohibited?[4]

I. *Black Slaves and Islam: a short history*

When in 1842 the Sultan of Morocco Mawlāy ʻAbd al-Raḥmān ibn Hishām (reigned 1822-1859) was approached by the British consul with a plea to take measures against the slave trade, the consul received, in his own words, 'a far from satisfactory answer' from the Sultan:

> Be it known to you, that the Traffic in Slaves is a matter on which all Sects and Nations have agreed from the time of the Sons of Adam, on whom be the Peace of God, up to this day and we are not aware of its being prohibited by the Laws of any Sect, and no one needs to ask this question, the same being manifest to both high and low and requires no more demonstration than the light of day …[5]

The Sultan was undeniably right. Slavery was there since the dawn of times and in the seventh century the new religious community of the Prophet Muḥammad and his Companions could not but accept the institution; it was the norm of the time. *Qur'ānic* legislation, though, did introduce some adjustments for the better. The slave's position improved compared to pre-Islamic times. He (she) was considered a person and was accorded a certain religious and legal status.

The modifications with respect to hitherto applied customs had, however, an unsurmised negative effect. Men and women who became adherents to the new faith could, as Muslims, no longer be captured as slaves. Only prisoners of war in *jihād* could be considered as such. As the Muslim countries' relations with their neighbors consolidated and fewer wars were conducted, this possibility was cut off. The demand for slaves did not decrease, however, and other modes of acquisition had to be considered, like purchasing the slaves in lands outside the Muslim world. An already centuries' old source of supply then gained in importance: *Bilād al-Sūdān*, 'the land of the blacks', as the Arab slave merchants used to call it. This area comprised the wide belt south of the Sahel and the Sahara, from the Atlantic Ocean to the Red Sea, including the kingdoms of Ghana, Mali, Gao and Bournou. Its peoples were considered to be pagans (*kuffār*), thus providing the theological justification for their capture or purchase from the Arab merchants. As we shall see later this stipulation of '*kuffār'* did not always apply.

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[4] B. Lewis, *Race and Slavery in the Middle East.* Oxford (University Press) 1990, 156. See also: *Sūra* 5: 87,89.

[5] Id., 151.

Ever since a thousand years before the Christian era, there had been caravan routes through the Sahara, from Morocco in the west as well as from Tripoli more eastwards. Also from Carthage trade relations were maintained with the regions on the other side of the desert. Wild animals, especially lions, panthers, elephants and monkeys, but also precious stones and slaves made up for the most important items of trade, which was first carried out by wagons. In the fourth century of the Christian era trade intensified and increased thanks to the introduction by the Arabs and the Berber tribes of the dromedary as a more efficient means of transport.

Already in those days there were two important Maghreb routes, i.e. the one westward bound from Morocco through Tuat to Timbuctu, and the central route from Tripoli and Gadames through the Fezzan to Agades and Kano. Caravans coming from the south, destination Tunis, turned off to the north at Gadames, direction Kairouan, the capital of Ifriqiyya. From there slaves were transported to the coastal ports of the Mediterranean. In magnitude these much older routes could certainly be compared to the better known Trans-Atlantic sea passages. Many hundreds of thousands were violently torn away from their homes against their will and led on foot on the 2000 kilometers through the Sahara's sand storms to be in the end sold 'legally' on governments' slave markets in, for instance, Istanbul and Tunis.

Black Slaves in Tunisia

By the end of the eighteenth, begin nineteenth century a yearly amount of approximately 1000 to 1300 slaves were imported in Tunisia, according to information found in the correspondence of the English consul with Whitehall in the late years of the eighteenth century.[6] There were slaves in all layers of Tunisian society: from the Bey's court to the common households in the city's suburbs. They were, however, absent in the economic structures of the city. A research conducted in 1964[7] into the most important guilds in Tunis at the time, indicated that in the guilds no slaves were employed, not even in the ones that may be considered labor intensive. The trades of for in stance coppersmith and weaver were all strictly reserved to the local population. The black slave's tasks were in the realm of domestic affairs. He or she was part of his or her owner's family: his status and position depended upon the one of his master.

Of the 1000 to 1300 imported slaves the greater part was exported to Muslim countries in the Middle East, a trading route which had been followed for many centuries. So, the number of slaves in Tunisia cannot have been extremely large at any time. Yearly replenishment was necessary, as there was hardly any 'natural growth': marriage between slaves was certainly not encouraged. A child born out of a liaison with the master and recognized by him was free. Besides, slaves were quite often released after their owner's death.

> Quand un riche Mahométan meurt et qu'il possède des esclaves, un certain nombre de ces pauvres créatures se voient octroyer leur liberté. Les esclaves affranchis suivent les obsèques, juste derrière la

[6] Public Records Office, London, Folder No. 77/3. R. Liman, 'Some Documents concerning Slavery in Tunisia at the end of the 18th century'. *Revue d'Histoire Maghrébine* 23/24 (1981) 349-357.

[7] P. Pennec, 'La Transformation des corps des métiers à Tunis sous l'effet d'une économie de type capitaliste'.In : A. Larguèche, *'L'abolition de l'esclavage en Tunisie : approches pour une histoire de la communauté noire.'* In : *'Les Abolitions de l'esclavage de L.F. Sonthonax à V. Schoelcher. 1793-1848'*. Actes du Colloque International tenu à l'Université de Paris VIII, Février 1994, 377.

> dépouille de leur maître ou de leur maîtresse, avec des longues perches, au bout desquelles est attaché le certificat attestant leur libération. Lorsqu'un Bey vient à mourir, plusieurs centaines de ces créatures infortunées sont mises en liberté.[8]

In 1841 no more than twenty to thirty slaves, most of them women, were bought or sold in the *Sūq al-Birka*, where the weekly slave market in Tunis was held every Friday.
The buying and selling procedure of slaves was regulated by a governor (*qā'id*) from his so called *qafaṣ* (cage), on an elevated platform in the middle of the market. On one side of the platform were seated together – on a rug – the sellers and the official clerks to witness the sale (*'udūl*), on the other side the slaves for whom a bidding was not yet made. The slaves for whom a bidding had already been made, were led by the market official, called *dellal* (sic)[9], a public crier, on a chain over the platform, until the highest bidding was heard. The buyers were mostly rich merchants and high dignitaries of the city, and Muslim. Christians and Jews were not permitted to purchase slaves. Prior to the procedure potential buyers were given the opportunity for inspection of the slave's physical condition: tongue, teeth, arms, feet and hands had to be shown. Subsequently, slaves were sold according to strict commercial regulations, like any other commodities sold on the market. According to Nathan Davis, the Anglican pastor to the colony of English merchants in Tunis at the time, slaves were usually well treated in Tunis, the trade in the market was a rather small scale, sober affair.[10]

The *Sūq al-Birka* is still there, not far from the great Zaytūna Mosque. It is an intimate little market, no larger than eight by ten meters, with a rather low ceiling. Nowadays it is a place where fine golden jewelry can be purchased. Quite a number of exquisite shops are draped around the square where formerly between the four red and green painted posts quite another trade was conducted.

Abolitionist Initiatives

The abolition of slavery outside Europe evolved over a period of over two hundred years. It was a world wide process of which the first signs appeared at the end of the eighteenth century. The year 1770 could be seen as a starting point. It is the year in which the Quakers in New-England prohibited their members the possession of slaves. A first date, however, is not necessarily the most significant: the 17th of May 1793 offers a compelling alternative. On that day a delegation of black slaves from the French colony Santo Domingo (Haiti), having sailed to France, addressed the National Convention in Paris and demanded the liberation of all slaves in the French colonies in America. The French assented and ratified their decision by the National Convention on the 16th Pluviôse of the year II (4th of February 1794).[11]

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[8] P. Sebag, 'Une description de Tunis au XIXe siècle'. *Cahiers de Tunisie*, 1958, 168.

[9] A. Rahal, *La Communauté Noire de Tunis. Thérapie initiatique et rite de possession*. Paris (L'Harmattan), 2000, 17.

[10] P. Sebag, 'Une description de Tunis', 169.

[11] Les Abolitions de l'Esclavage (1793-1794-1848) : *Une Célébration Nécessaire*. Colloque international tenu à l'Université de Paris VIII, à l'initiative de l'Association pour l'étude de la Colonisation Européenne (avec le soutien actif de l'UNESCO – Programme Mémoire des Peuples : La Route de l'Esclave) 3,4,5 Février 1994, 199. The 1794 decision was, however, revoked in 1802, when Napoleon restored colonial slavery. In: W.G.Clarence-Smith, *Islam and the Abolition of Slavery*. London (Hurst & Company), 2006, 110.

In the same period we see in England and in France the rise of the first, often religiously inspired abolitionist movements[12] striving for the emancipation of slaves and the diminishing of the slave trade. They lobbied with their governments to take measures to that effect, not only in their colonies, but also in the regions of their political influence.

In the countries of the Muslim Middle East similar campaigning movements did not exist. Among the urban population and also in the rural areas slavery was a widely accepted institution. An extensive body of law and jurisprudence regulating the slave's position as part of the law of personal status and family law existed. As long as one abided by these rules, one felt supported and justified by God's word.

A broad movement of protest from the black slave population itself could hardly be expected. Slaves were a 'natural' part of family life. Their loyalties would in general be with their owners rather than with their fellow slaves. Besides, although abolition of the institution of slavery was until then unheard of, the manumitting of slaves after a certain period, or after their owner's death was a common aspect of that same institution and made the need for its eradication perhaps less urgent and obvious. After their manumission slaves were usually kept within the family bounds, they sometimes even stayed in the house or in the direct vicinity: they remained the owner's responsibility.

> When a slave is freed by his master, the freedman and his descendants are bound forever to the manumitter in a relationship of patronage or clientage (*walā')*. This is the rule in classical Islamic law. Both, patron and client are called *mawlā'* (pl. *mawālī*). *Walā'* is regarded as a sort of kinship tie between the patron and his client.[13]

So, in the Tunisian situation in the middle of the nineteenth century, there was no question of an ethical appeal from the population in favor of the abolition of a social practice of long standing, a practice that in most cases kept master and slave in a to both satisfactory interdependence.

The initiative to the 1846 decree is therefore not found in the debating rooms of religious movements as was the case in Great Britain, but behind the walls of Le Bardo Palace, just outside the old city center, at the Bey's Court. The Bey 'possessed a natural inclination towards a civilization that holds freedom as its true core and foundation' as Ibn Abī al-Ḍyāf, describes him.[14] The Bey became a member, a 'Président Protecteur' of the 'Institut d'Afrique' in Paris, 'fondé pour l'abolition de la Traite et de l'Esclavage de nos frères Africains', already in September 1839, a year after the institute's foundation.[15]

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[12] The majority of the society's members in England were Quakers. In: Dr. R. Reinsma, 1863. *Een merkwaardige episode uit de geschiedenis van de slavenemancipatie.* Den Haag (Van Goor Zonen) 1963, 9.

[13] U. Mitter, 'Unconditional manumission of slaves in early Islamic law: a hadith analysis.' *Der Islam*, Band 78. Heft 1, 2001, 38.

[14] *Itḥāf* IV, 86.

[15] Archives Nationales de Tunisie. Carton 230. Dossier 421.

II. *The Historical Context of the Decree*

Aḥmad Bey and his Court

When the Dutch Prince Hendrik, also called 'the Navigator'[16] paid a visit to Aḥmad Bey during the interval of his naval exercises in the Mediterranean in 1844, he got a very warm and welcome reception with all the glitter and glamour he could expect from a befriended ruler. The Prince was accommodated in the Bey's palace, in an 'apartment that was richly decorated with gold and marble; a Turkish bath was also provided for.'[17] What Prince Hendrik probably took for granted was the fact that the palace was richly furnished with chairs, tables, chests of drawers, in short, it was a royal lodging in European style, a novel luxury Aḥmad Bey had permitted himself upon his ascendance in 1837. On the walls were portraits of Napoleon and paintings of his battles.[18] On his book shelves figured a book on Napoleon's reign the Bey had ordered to be translated into Arabic.[19] The Bey's Court, apparently, was open to the ideas of the new times.

If we now attempt to picture in our minds who participated in the debate on modernization and reform at the Bey's Court and along what lines the decision to abolish slavery was made, a relatively small group of reformers emerges, whose members belonged to the inner circle of the Bey. In the first half of the nineteenth century it were these members of the ruling elite and the people in their immediate vicinity who first came into contact with modern times. They traveled abroad, before 1846 mostly into countries of the Middle East. They kept in touch with the foreign consuls who informed them about the state of affairs in Europe. By definition they were *mamluks*[20] who had entered the palace at a very early age and had received their education there, together with the princes of the beylical family.

First of all should be mentioned here Muṣṭafā Khaznadār (1817-1878), a *mamluk* from the Greek island of Chios, the Bey's Treasurer and a most influential personality in Tunisia for over forty years. Khayr al-Dīn, a *mamluk* from Circassia, had only entered the Bey's palace in 1840. Shortly after this, in April 1842, he was already appointed colonel (*miralay*) with a *ferman* issued from the Sultan in Istanbul.[21] Later he would become Minister of the Navy, Prime

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[16] Hendrik de Zeevaarder: Willem Frederik Hendrik (1820-1879), Prince of the Netherlands, third son of King Willem II. He served as an officer in the Navy and was the first of the Royal Orange family to visit the Dutch East Indies (1836-1838). He became commander of an squadron in the Mediterranean in 1843. In 1850 he became 'stadhouder' of the Duchy of Luxembourg.

[17] J.H. Visser, 'Prins Hendrik de Zeevaarder.' In: *Spiegel der Historie* 8/9 (1970), 332.

[18] L.C. Brown, *The Tunisia of Ahmad Bey. 1837-1855*. Princeton (University Press) 1974, 316.

[19] J. Ganiage, *Les Origines du Protectorat français en Tunisie (1861-1881).* Paris (Presses Universitaires de France) 1959, 113.

[20] Within the walls of Le Bardo Palace there lived beside the many black slaves another category of servants, originally Christian slaves, *mamluks*. They had entered the Bey's service at a sometimes very young age and were mostly purchased in Istanbul or presented to the Bey as a gift. The Balkan countries or the regions around the Black Sea were often their homeland. They had no domestic tasks, but were educated together with the Ḥusaynīd princes in the palace. Most of them went into the army. The brighter ones became high government officials, ministers. They were the favorite marriage candidates for the Ḥusaynīd princesses. In: L.C. Brown, *Tunisia*, 43. See also Chapter III, 96.

[21] R. Mantran, *Inventaire Documents d'Archives Turcs Dar al-Bey*. Paris (Presses Universitaires de France) 1961, XXIV.

Minister, and for a short period Grand Vizier of the Ottoman Empire under Sultan Abdulhāmid II. He is the author of the work on reform and modernization *Aqwam al-masālik fī maʿarifāt aḥwāl al-mamālik*, we referred to in the beginning of the first chapter.

Within the group, albeit at some more distance from the Bey's court, three *ʿulamāʾ* have played a role of importance, Muḥammad Bayram IV (1805-1861), Ḥanafī *shaykh al-Islām*, like his great-grandfather Bayram I, the author of the *Risāla* in the first chapter, grandfather and father before him, the Mālikī *bāsh mufti* Ibrāhīm al-Riyāḥī (1766/67-1849/50), a leading member of the Tijāniyya Brotherhood and largely responsible for its rapid growth in Tunisia, and Maḥmūd Qābādū (1812-1871), who is also considered Tunisia's most famous poet of the nineteenth century. He became at the Bey's request a teacher of *qur'ānic* and Arabic studies at Le Bardo Military School.

In an earlier phase, before Aḥmad ascended to the throne, still another *ʿālim* was to him a vehicle of information from Europe, i.e. Muḥammad Siyāla (d. 1832), professor at the Zaytūna Mosque, and teacher at the *madrasa* at Le Bardo Palace for the young princes and *mamluks*. He had traveled to London.[22]

A place of prominence should be awarded to the Bey's secretary, Aḥmad Ibn Abī al-Ḍyāf, in beylical service since 1827.[23] His importance in this period certainly transcends his function as secretary. He was an *ʿālim* and had enjoyed the same traditional religious education as the *ʿulamāʾ* already mentioned; al-Riyāḥī had been one of his professors, Bayram IV one of his fellow students. Bin Ḍyāf was the liaison officer between the court and the functionaries within Le Bardo as well as outside. He was the Bey's contact with the members of the *Majlis al-Sharʿī*, the High Religious Council. It was under his regime that the correspondence between the Court in Le Bardo and the Sublime Porte in Istanbul changed to a less clerical form of Arabic.

It is remarkable, certainly if we compare this period of reform with later stages, that at least three of Aḥmad Bey's group were religious scholars, of whom al-Riyāḥī and Qābādū were leading members of Sufi brotherhoods. In the second half of the nineteenth century some of the more traditionally oriented Tunisian *ʿulamāʾ* considered the Sufism of the Tijāniyya, the Raḥmaniyya and the Sanūsiyya on a par with the modernist movements in the Islam. In 1876 a group of these anti-reformist *ʿulamāʾ* demanded the departure of the Sanūsiyya *ṭariqa* from Tunisia as its members would involve themselves with *ijtihād*.[24]

Aḥmad Bey's reigned over approximately one and a half million people. He was almost thirty-one when on October the tenth 1837, the day his father Muṣṭafa died, he assumed power. His mother was the originally Christian slave girl from San Pietro, Lella Djenatti.[25] Aḥmad b.

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[22] *Itḥāf*, VI, 162.

[23] A. Abdesselem, *Les Historiens Tunisiens* , 339.

[24] A. Green, *The Tunisian Ulama (1873-1915).* Leiden (E.J. Brill) 1978, 62.

[25] She, her sister and her mother were captured in Carloforte, a small village on the island of San Pietro, South West of Sardinia, together with nine hundred others from the local church, on the second of September in 1798. Further research could reveal how many of these nine hundred eventually returned to Carloforte. In: P. Martini, *Storia delle invasioni degli Arabi e delle Pirateri dei Barbaresschi in Sardegna*. Cagliari (Tipografia di A. Timon)1861, 244 ff.. A booklet on Sardinia's folklore reveals that together with the captives the statue of the Black Madonna was taken. This Black Madonna did go back and found shelter in a cave just outside the village. Still today, every

Muṣṭafa had been raised and educated in the beylical palace of Le Bardo together with the other young princes and *mamluks* of his generation, an education that comprised of the learning by heart of the Qurʾān and a training in military skills.

From the many accounts of his reign he emerges as an enthusiast and energetic reformer, in the words of his French military adviser Philippe Daumas

> In spite of all his faults (…) Aḥmad Bey was unquestionable the most intelligent and civilized inhabitant of the Regency. He alone understood the century we live in, and he tried to take his people out of the ignorance and apathy in which they have lived for centuries.[26]

Another European describes him as a 'un prince soucieux (…) pour accroitre la félicité de son peuple.'[27] He must have had a good insight in the conditions of his realm. Before he assumed power in 1837 he was during a number of years 'the *Bey al-Maḥalla'*, the head of an expedition launched twice yearly into the country, in the winter to the south, in the summer to the west. It was a tour of inspection during which justice was administered, provincial governors were appointed and, the main purpose of the exercise, taxes were collected. The *maḥalla* in general took two months, and approximately two thousand clerks, a specially designated *qāḍī al-maḥalla,* soldiers and members of the ruling elite took part: 'It was the government itself going out to meet the tribes.' [28]

Characteristic for Aḥmad Bey's reign is the almost naive and spontaneous enthusiasm[29] the members of his inner circle displayed for the ideas of the modern times, their determination to give these a place in their society and to embed them in an Islamic context. This first generation of reformers became fascinated by new ideas about freedom, justice, by new technical innovations. To a lesser degree they were aware of the inherent danger of a growing European encroachment and influence that came with these ideas. And if they were, they felt confident that problems could be solved, together with the western powers.

> Khayr al-Dīn indeed was aware of the dangers inherent in the growth of European influence over the affairs of the [Ottoman] Empire, but thought they could be resisted with the help of the liberal powers themselves; they had not yet become so great as to constitute the central problem of political life, and the main problem was still what it had been for the Ottoman writers of the seventeenth and eighteenth centuries, internal decline, how to explain and how to arrest it.[30]

Soon this would appear to be an illusory thought: the *ruh al-waqt* (the spirit of time) brought not only new ideas, but also new power relations around the Mediterranean, the old world sea.[31]

November the return of the 'Black Madonna of the Slaves' is remembered. In: J.P. Caredda, *Folclore in Sardegna*. Genova (Sagep Editorice) 1981, 82.

[26] L.C. Brown, *Tunisia Ahmad Bey*, 235.

[27] P. Sebag, 'Une description de Tunis', 175.

[28] L.C. Brown, *Tunisia Ahmad Bey,* 128.

[29] P.S. van Koningsveld, *Sprekend over de islam en de moderne tijd*. Utrecht (Teleac)/Amsterdam (Prometheus) 1995, 58.

[30] A. Hourani, *Arabic Thought in the Liberal Age*. Oxford (University Press) 1962, 102.

[31] Dr. Abraham Kuyper, *De Oude Wereldzee*. Amsterdam (Van Holkema & Warendorf) 1907.

Tunisia and Western Europe: Changing Patterns of Equality

The political situation during Aḥmad Bey's rule was not very different from the one before that decisive battle of Lepanto, on the sixth of October 1571, that preceded the Ottoman intervention in 1574.Then the great world powers, Western Europe and the Ottomans had met in confrontation. Now in the middle of the nineteenth century, this was the case again: the delicate balance of power kept with great assiduity in the intermediate centuries by both parties, wavered. Tunisia was since 1830, the year in which France occupied Algeria, and 1835, the year in which the Ottoman Empire assumed direct control over Tripolitania, wedged between the two great powers and feared - once more - the expansive drives of both.

Whether it liked it or not, Tunisia became part of the so called 'Eastern Question,'[32] the political power play in the Balkans, whereby France and England fought the Russian expansion in the region and the Ottoman Sultan, in an effort to hold on to his empire, made himself dependent on the support of both. More than ever Tunisia found itself in its 'weathercock position'[33] and had to please in its foreign policy East as well as West.

The Tunisian ruling elite had an ambivalent reaction to the French occupation of Algeria: all of a sudden the proximity of this old friend of long standing, i.e. the French, became 'too close for comfort'. On the other hand it relieved Tunisia from a hostile and intrusive neighbor, who had often raided its western territories.[34]
To the French economic considerations had not been the most important incentive to chase the Ottomans out of Algeria. Rather than by commerce the French were moved by ideas of cultural imperialism. In a euro-centric frame of mind North Africa was perceived as still part of Christian civilization; it had to be embraced by the true faith again.

After 1830 France as well had to review its relationship with Tunisia, now is immediate neighbor. In defining the new relation France emphasized the sovereign position of the Tunisian Bey. The nature of the bonds between the Bey and the Sultan in Istanbul were, according to the French government, comparable to those between the Pope and France or Spain.

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[32] The Eastern Question grew from two related processes – the continuing expansion of the Russian Empire and the steady retreat of the Ottomans. It gave rise to the independence of the Balkan nations, to the Crimean War (1854-6) and to a chain of complications which eventually sparked the fatal crisis of 1914. For the Russians re-establishment of Christian power on the Bosporus formed the ultimate goal of tsarist policy. Britain feared for its lines of communications to India. The Crimean War took place when Britain and France decided to assist Istanbul in efforts to defend their Danube principalities and to resist Russian claims of protection over Ottoman's Christian subjects. N. Davies, *Europe. A History*. London (Pimlico) 1997, 869.

[33] L.C. Brown, *Tunisia Ahmad Bey*, 21.

[34] The Bey sent his complements to the French consul, Comte de Bourmont, on the occasion. In: J. Revault, *Palais et Demeures de Tunis (XVIIIe et XIXe siècles).* Paris (Editions de Centre National de la Recherche Scientifique) 1971, 17.

> (…) la Régence conserve avec le grand seigneur un lien de *suzeraineté spirituelle* [sic, my italicization]. Chaque Bey, à son avènement, sollicite du Sulan, en sa qualité, non de souverain des Turcs, mais de Commandeur des Croyants, la consécration religieuse de son pouvoir…[35]

In this French line of thought there was no question of a political dependence between Tunisia and the Ottoman Empire: between Tunis and Istanbul there existed a bond of mere spiritual affiliation. So, by implication, the French-Tunisian relation could be characterized as one between two sovereign states. It is clear that France would reject beforehand any political claim made by the Sultan on Tunisia like the latter had done in the Tripoli case. France, then, favored the *status quo* and did not like the idea of having the Ottoman Empire as its next door neighbor in North Africa.

Having said all this, commercial interests in North Africa did play their role in European, mostly French, private enterprise. Still, the number of European Christians in the city of Tunis was limited in the beginning of the nineteenth century: a small group of merchants that had settled in the capital under the capitulations.[36] Ganiage mentions a number of approximately 820 persons[37]: a small community without any problems to speak of, less than one percent of the total of 85.000 inhabitants of the city of Tunis.[38]

It is, however, a significant characteristic of the second half of Aḥmad Bey's rule that this tranquil picture of the European Christian colony is starting to crack. There appears to have been an explosive growth in numbers after 1840: Sebag mentions 10.000 European Christians in 1842.[39] Ganiage reports a number of 8.000 in the year 1834, but also indicates that this number had grown to 12.000 in 1856. This would amount to a seven percent of the total population, if adhered to the 85.000 estimate. Moreover, Ganiage draws quite a different picture when it comes to the social level of these European Christians. They were not involved in any kind of commercial activity. The majority of these 'new' Christians came from Malta, Sicily and numerous other smaller islands in the Mediterranean, forced by unemployment and poverty to leave their homes. Tunis became a haven for these thousands of young and

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[35] Archives des Affaires Etrangères : Documents conservés au Quai d'Orsay : series Tunis. Mem. Et Doc. Vol. 11, note 16 : Situation internationale de Tunis (29.11.1880). In : J. Ganiage, *Les Origines*, 16.

[36] Capitulations, charters of fiscal and commercial privilege given by the Ottoman sultan. The Ottoman term is *'ahdname* , a Letter or Promise (in Arabic *imtiyazāt*). The capitulations were bilateral treaties and meant to regularize in accordance with the rules of Islamic law, the permanent residence within the borders of the *Dār al-Islām*, i.e. the Ottoman domains, of non-Muslim foreigners, subjects of non-Muslim states in the *Dār al-Harb,* (*harbis*) in disregard of the classic principle of the permanent state of war between these two parts of the world. The first *'ahdname* concluded was the one with the small merchant republic of Ragusa (present day Dubrovnik) in 1430. The French obtained their first capitulation in 1332/34 for their Marseille merchants in the Ottoman territory of Alexandria in Egypt, which was renewed a number of times in the following centuries. Capitulations were later also granted to England and the Netherlands. In the nineteenth century relations between Istanbul and the European states moved into another political reality. From then on treaties were styled according to the western law of nations. In a.o. A.H. de Groot, 'The Historical Development of the Capitulatory Regime in the Ottoman Middle East from the Fifteenth to the Nineteenth Centuries'. *Oriento Moderno* 3-2003, 575 ff.

[37] J. Ganiage, *Les Origines*, 45.

[38] L.C. Brown, *Tunisia of Ahmad Bey,* 377.

[39] P. Sebag, 'Une description de Tunis', 163.

homeless that reached Tunisia's sandy shores in small fishing boats: a multitude of people at the outer fringes of society, without any status: illegal immigrants.

Many of them came, after an offense of some sort, into contact with the Tunisian Islamic law, or rather, wanted to avoid that and tried to take refuge in one of the European consulates. In the framework of the capitulations these were entrusted not only with the interests and the possible defense of their fellow countrymen, but could also be in charge of foreigners of other origin, their so-called 'protégés'. Even Tunisians could be for some reason or other be placed under their jurisdiction. 'The French reap a good harvest by their protection of Christians, which characteristically enough they use as a political engine of aggrandizement' remarked James Richardson, the representative of the British and Foreign Anti-Slavery Society.[40]

These legal accommodations, the capitulations, originally meant for a handful of merchants temporarily on Tunisian soil, did not measure up to the circumstances of the Christian foreign colony in the middle of the nineteenth century. It became a source of tension and aggravation for the Tunisian Bey who did not like to see his authority undermined in his own territory.[41] And, the appeal on the capitulations did not stop at the crowds pouring in from Malta and Sicily. Also black slaves who considered themselves mistreated by their Tunisian owners, tried to flee to the safety of the foreign consulates.

These developments brought about a change in relations between the Bey and the representatives of the West-European countries. On the one hand it was his political interest to keep them as friends and potential supporters against the dreaded centralization efforts of the Ottoman Sultan. On the other hand, he was certainly not prepared to submit to their demands for ever more trading concessions and other privileges. Before Europe had become so expansionist in its attitude towards North Africa, these patterns were governed by equality or even Tunisian supremacy. Sardinia, having served once as Tunisia's own backyard, had now grown into a state with imperialistic inclinations and negotiated arrogantly on its own terms. For centuries it had been the custom for European consuls to kiss the Bey's hand in formal audiences. The new French consul assuming his duties in 1836, refused to make this gesture: 'a symbolic and important turning point.'[42]

Tunisia and the Ottoman Empire

Five years after France's occupation of Algeria, Tripoli, since centuries an Ottoman province with a great measure of independence like Tunisia, was placed under direct Ottoman control. It was a second source of unrest to the Bey. In the Eastern Question England and France sided with the Ottoman Empire against Russia. That did not mean, however, that the Sublime Porte agreed with France's opinion on the Tunisian position as mentioned above. Sultan Abdülmecid (1839-1861) viewed the matter from quite a different angle: true enough, Tunisia was one of the farthest outposts, but still part of his Empire. As we have seen, the Bey owed the legitimacy of his power to his bond with the Sultan, the Sultan was entitled to the Bey's loyalty and solidarity. In the early decades of the nineteenth century the Sultan expected something else as well: compliance with the Ottoman Government's ambitious reform

[40] J. Richardson, *Travels in the Great Desert of Sahara in the years 1845 and 1846*. London (R. Bently) 1848. Vol. I, 236.

[41] Ganiage, *Les Origines*, 50.

[42] L.C. Brown, *Tunisia Ahmad Bey,* 242.

programme, i.e. the *Tanẓīmāt.* Only three months after the official proclamation of the *Khaṭṭ-i sherīf* of *Gülkhāne* (The Noble Rescript from the [Sultan's] Rose Chamber), Aḥmad Bey was called upon to follow the leader.[43]

Aḥmad Bey contended himself by reading the text of the Rescript to the military and religious officials of the country. To the Sultan he responded that he greatly admired and appreciated the plans brought forward in the Rescript, but that their implementation had to take place at a later date. The Bey did not recognize in the pleas from Istanbul the Sultan's fatherly animations but rather the phantom of centralization of which he had perceived the first apparitions in 1835, when Istanbul had taken over the reins in Tripoli.

Choosing a Position

The Bey tried to ward off the from West and East encroaching aspirations with the maxim 'If you cannot beat them, join them'. Realizing that he could never stand up against the French or the Sultan's troops he resorted to a policy that, in his mind, would leave them no excuse for any such action. He embarked on an ambitious reform- and modernization program, thus hoping to be recognized by the powers as one of the 'civilized nations' and to be able to blow his own trumpet in the international concert. To some extent these assumptions are of a speculative nature. We can only assume that this was Aḥmad Bey's line of thought in 1841. Green, though, did ascribe these notions to Khayr al-Dīn[44] and it does not seem too bold to say that these were the thoughts and policies that circulated at the Bey's Court, also in an earlier period. Brown corroborates this image of Aḥmad Bey and his inner circle by emphasizing more than once that to be accepted by the European powers as one of their equals was a strong motivation for the Bey's actions in this respect. Further affirmation of this view may be found in the earlier reforms of the army and the introduction of European uniforms, the changes introduced at the Zaytūna University, the start of a modern military school in the Bardo Palace, the introduction of the Chappe optical telegraph connecting his palaces, the textile plant in Teburba… .

It also transpires in the feelings of apprehension of the ministers of the Bey's successor, M'ḥammad b. Ḥusayn: he did not want to tread in his cousin's footsteps and bought slaves again on a grand scale. 'All ministers discouraged him and told him of the dangerous consequences of his conduct: if only the European states would hear of it…'[45]

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[43] R. Brunschvig, 'Justice religieuse et justice laïque', 59.

[44] A. Green, *The Tunisian Ulama*, 107.

[45] *Itḥāf* (ed. 1990), IV, 294.

The Bey and the Tunisian Population

The contact with Europe and the Europeans was, as it had always been, a prerogative of the urban elite and the Court. The Tunisian population had no part in it. The Bey's ambitious plans of modernization did not always fall in good earth with his people. Through the introduction of, for instance, the new European style military uniforms, the old traditional uniforms fell into disuse: a painful blow to the Tunisian tailors, already in the time of Ḥammūda Pācha, as Grenville Temple recorded.

Tunisian society in the first half of the nineteenth century was traditional, many of the innovations were not appreciated and were seen as a sign of the end of times.[46] In this context Aḥmad Bey had to carry out his plans and launch the abolition of slavery. Aware of the resistance he might encounter he trod gradually (*tadarraja*) and promulgated the abolition in three separate decrees over a period of five years, i.e. August 1841, December 1842 and January 1846.

III. *The Three Phases of the Abolition Decree*

The first abolition decree of August 1841 had mainly domestic implications: the slave market, the *Sūq al-Birka* in the medina was closed and the export of slaves prohibited. In the chronicle of Ibn Abī al-Ḍyāf, we read: 'He was, however, silent about the slaves outside the market.'[47] It is not clear whether the foreign trade in slaves is referred to here or the sale of slaves outside the official slave market in Tunis, in the south of the country. Although there only was this one market, we may assume that slaves coming from the Sahara regions were sold on the spot in the south to the interested parties and not directed first to the official market in Tunis.

The promulgation of this first decree may be considered to have served two political goals. It would dawn on England and France that the Bey made a serious attempt at modernization: he even overtook France that put an end to slavery in its colonies only seven years later. To the Sultan in Istanbul he demonstrated his good will towards the *Tanẓīmāt,* even though he kept his own pace. A first decree to close the internationally famous Istanbul slave market was issued in December 1846, the first day of the new Muslim year 1263. It came into effect in 1847.[48]

It must have pleased him to receive two letters from abroad. One was from the 'British and Foreign Anti Slavery Society for the Abolition of Slavery and the Slave Trade Throughout the World' from their correspondent in Malta, as becomes clear in a letter written by a London member of the Society to this Malta correspondent (16th December 1841) in which he is praised for the contacts with the Bey of Tunis. The London member, John Scoble[49] writes:

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[46] A. Abdesselem, *Les Historiens Tunisiens*, 87.

[47] *Itḥāf* IV, 87. See Appendix B, 159..

[48] E.R. Toledano, *The Ottoman Slave Trade and its Suppression 1840-1890.* Princeton, N.Y.(University Press) 1982, 107.

[49] John Scoble was also in contact with the Dutch anti-slavery societies in the process of being founded in the years 1840, 1841. Another member, Elizabeth Fry was received by the Dutch king, Willem II in July 1841 and spoke to him about the slaves' emancipation in the Dutch West Indies. Abolition was promulgated in 1863. In: Dr. R. Reinsma, *1863. Een merkwaardige episode uit de geschiedenis van de Slaven Emancipatie.* Den Haag (Van Goor Zonen), 1963, 14.

> I may add also, that, at their next meeting [of the Anti-Slavery Society] which will be held at the end of this month, they will take into consideration the best means of giving public expression to the view they entertain of the enlightened and benevolent efforts of this distinguished personage [the Bey] to secure the entire suppression of the Slave Trade within his Dominions.[50]

The second letter came from the 'Institut d'Afrique' in Paris (15th of August 1841), signed by the secretary, Hippolyte de Saint Antoine as well as by the president of the Institute, the Prince de Rohan de Rochefort, in which the Bey is not only offered 'Le Diplôme de Protecteur' but also encouraged to use his influence upon his neighbors:

> Nous aspirons que vous assurez de votre toute puissante influence sur vos voisins pour les convertir à vos principes généreux.[51]

One and a half years later, in December 1842, Aḥmad Bey issued another decree, in which the export of black slaves was prohibited, and, as a second stipulation, from then on, everyone born in Tunisia would be free. Bin Ḍyāf writes :

> Subsequently, he prohibited the export of slaves for trading purposes out of the province. A communication to that effect was forwarded to the harbors of the kingdom. Subsequently, in the last days of the year 1258, he promulgated a decree, [stipulating] that every person born in the kingdom of Tunisia is free and should not be bought or sold.[52]

It is not unlikely that the 1842 decree's promulgation was prompted by another incident of abuse of the capitulations. Afraid to be sold separately, a family of black slaves had sought refuge in the Chapel of Saint Louis in Carthage, built in that same year by the French in honor of their King Louis the Ninth who had succumbed to the plague on the spot whilst on his way to Jerusalem with his Crusading army, in 1270.[53] The French consul succeeded in talking them into seeking asylum in the French consulate whereupon he contacted the Bey. After the latter's personal intervention the black family was declared free.

The Bey could have stopped there and then. With these first two decrees, the closing of the market in 1841 and the official statement in 1842 that everyone born in Tunisia could no longer be a slave, slavery would have died a silent death. And probably that was what he initially intended to do. Bin Ḍyāf, was then given the order to write a letter to that effect to the members of the High Religious Council, requesting their approbation.[54]

There was, however, in 1844, another serious conflict of jurisdiction, between the Bey and the European consuls in the case of the Maltese Paolo Xuereb who had killed a fellow

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[50] Archives Nationales Tunisie. Carton 230. Dossier 421. Doc. 25. Five months later it was suggested by the Malta correspondent to the Secretary of the British and Foreign Anti-Slavery Society in London to establish a Committee for the Society in Malta. Letter from Malta (16th April 1842) to the Secretary John Harfield Tredgold. In: Guides to the Papers of the Anti-Slavery Society, Rhodes House, London.

[51] Archives Nationales Tunisie. Carton 230. Dossier 421. Doc. 49.

[52] *Itḥāf* IV, 87. See Appendix B, 159.

[53] L.C. Brown, *Tunisia Ahmad Bey,* 324.

[54] *Itḥāf* IV, 87.

countryman and a certain Yūsuf Ben Abdallāh,[55] a Tunisian Muslim who worked as an interpreter at the British consulate. The accused fled with two accomplices to the British consulate. The British consul, Sir Thomas Reade, refused, however, to take on the case on the basis of the capitulations, nor was he, for whatever reason, prepared to have Xuereb stand trial in Malta. After consultation with London the case was referred to the Tunisian court of justice.

In the presence of the Bey and three Malikī jurisconsults, judgment was passed and the death sentence pronounced. Xuereb was executed a few weeks later. The Xuereb case led to an enormous upheaval amidst the foreign community in Tunis.[56] The Americans sided with the English; the Dutch sided with the French. It was clear that Sir Thomas Reade, although acting in accordance with prevailing treaties, could have claimed jurisdiction, certainly in the then existing state of affairs between the Bey and the consuls. The French consul insisted upon his government to protest with the British government – but in vain. Pamphlets were spread around from Malta, the Dutch consul was accused by the British consul of having bribed the two witnesses and had to appear before the Bey.[57]

Following the letter of the law, the Islamic law, the *sharīʿa*, as well as capitulations, the Bey was fully entitled to take the case in his own hands; he had the unquestioned authority to pass the death sentence since the murder of a Tunisian subject was involved. So he persisted and perhaps even gave himself secretly a pat on the back, satisfied to have resisted the consuls' pressure this time. Soon, however, the escalating effects of the event became clear. He must have realized then that quite other motives were at stake. The international skirmishes of the Eastern Question were fought in the antechambers of his own palace, on small scale dimensions.

The question may be raised what lay behind the French and English irritation. Would Xuereb have escaped with a milder conviction when judged in a European court, as the French and also the Dutch had insisted? Chances are he would not be spared capital punishment in England's Malta. The very fact of Muslim jurisdiction in this case applied to a Christian later appeared to have been the true cause of the infuriated European responses.[58]

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[55] K. Chater, *Dépendance et mutations précoloniales. La Régence de Tunis de 1815 à 1857*. Tunis (Publications de l'Université de Tunis) 1984 521.

[56] L.C. Brown, Tunisia Ahmad Bey, 247 ff.

[57] The Dutch consul Nyssen saw himself maneuvered in a unpleasant situation, the more so as a short time after the incident, on the 27th of July 1844, the Dutch Prince Hendrik arrived. During his visit the prince discovered that the Dutch consul did not enjoy the same privileges as the consuls of other countries due to an accusation made by the British consul. The prince acquainted himself with the case, got convinced of the innocence of his consul and tried to talk things over with the Bey. The latter, however, did not want to change his mind. Thereupon, much to the Bey's annoyance, Prince Hendrik refused the personal gifts presented to him at his departure: a lion, an Arabian horse with gold-decorated harness and a Turkish pipe with diamonds J.H. Visser, *Prins Hendrik,* 332. From the letter Prince Henry wrote to his parents a slightly different course of events transpires than presented by Brown. From the frigate "Z.M. De Rijn" in the harbour of Malta, Prince Hendrik writes to his parents on the first of September 1844: "…Sir Thomas Reade (…) c'est lui qui profitant de la faiblesse du Bey est venu mettre un obstacle au course de la Justice (…) Mon Bon et Cher Papa, comme j'ai pensé à Vous ainsi qu'à Maman, quand j'ai défendu (…) les droits lévés de Votre Consul à Tunis, quand j'ai prononcé les paroles qu'on a le droit de prononcer (sans dire de grossièretés) quand on défend une juste cause…". In : Koninklijk Huisarchief, Den Haag. Inv.nr. A40-Via-64.

[58] From the correspondence between the Dutch and the British government on the question, it becomes clear that, also in the eyes of the Dutch, Sir Thomas Reade had acted in accordance with then prevailing international

Amidst this turmoil, in the year 1845, an anonymous pamphlet emanated from Malta and was spread among the ruling elite of the Regency. It spoke in favor of abolition and underlined its views with numerous citations from Qurʾān and Tradition.[59]

The weeks and months of tumult and public unrest following the Xuereb incident prodded the Bey into re-affirming his decisions. In January 1846 he issued his concluding abolition decree by ordering the immediate release of all black slaves. In his letter to the High Religious Council (*Majlis al-Sharʿī*) he wrote:

> Moreover, political interests prompted our actions. We wanted to prevent them seeking refuge in the territory of rulers not belonging to their religious community. We therefore assigned government officials at the *zawiya* of Sīdī Muḥriz, at the *zawiya* of the Bakrī family and at the *zawiya* of Sīdī Manṣūr. For anyone appearing before them and seeking protection, they will write out a document stating our verdict that they should be liberated from their masters, in conformity with our decree. The document then has to be presented to us to be certified.[60]

Reactions to the Abolition Decree

From abroad

One of the first reactions came from the French consul Charles de Lagau and, surprisingly, it was negative. He assumed that the English consul Sir Thomas Reade had had a finger in the pie. According to Charles de Lagau the abolition decree would have a less positive effect on the slave population than expected. Prior to the abolitionist measures slaves could turn to the governor of the slave market in *Sūq al-Birka* in a case of maltreatment and asked to be sold to another master. This had become impossible now. Moreover, slave owners could no longer sell their redundant slaves for a good price in the market, still following the French consul's words.[61]

The Bey's secretary recorded that the liberation decree 'attained a special position among the nations of freedom (*'umam al-hurriyya*). Persons of prominence wrote to him to and complimented him on the action.[62]

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treaties. On the other hand there was among the Dutch government officials an understanding for the position of the French and Consul Nyssen, who had acted in view of the precedent the Xuereb case would provide for future European offenders in case the capitulations would no longer apply: 'Could the Tunisian courts of justice provide sufficient guarantees for a fair trial?' The tension between The Hague and London over the case was resolved by the acknowledgement of the latter that Sir Thomas Reade's conduct had not been quite in line with diplomatic standards. In: C.W. van Santen, *Het International Recht in Nederlands Buitenlands Beleid. 1840-1850.* Diss. Rijksuniversiteit Leiden. 1955, 773-775.

[59] K. Chater, *Dépendance et mutations précoloniales,* 552.

[60] *Itḥāf* IV, 87. See Appendix B, 160.

[61] L.C. Brown, *Tunisia Ahmad Bey*, 323.

[62] *Itḥāf* IV, 89.

From the Tunisian population

Domestic resistance was minimal, writes Larguèche. The Bey's 'life style' was a norm and a example for the urban elite and his example was followed,[63] a view that is not fully shared by Brown and which seems to be a too simple observation. It would take years, decades before slavery had completely vanished from Tunisia's soil. When in 1996 the 150th anniversary of the abolition decree was commemorated, Tunisians reacted in disbelief: '1846? …. Ce n'est pas si loin!'
From the regions outside the city of Tunis, in particular the oases in the South, came, however, quite a few negative reactions. Slaves were there employed in the agriculture and irrigation works in the oases and the abolition of slavery had far reaching consequences. It was one of the reasons for the insurgence of 1864.[64]

And the slave…

Information on the immediate consequences of the abolition of slavery in Tunis seems to be hardly available. In, for instance, Brown's work on the reign of Aḥmad Bey, no concrete numbers are provided. In Demeerseman's elaborate article on the social categories in the city of Tunis in the nineteenth century, slaves are not even mentioned.[65] Neither is there any reference to slavery and its abolition in Ganiage's thorough work on the period prior to the French colonization. A global idea can be derived from the data of *majba* (poll tax) registration introduced in 1856. There seems to have been a relative high concentration of liberated slaves in the city of Tunis, the townships of the Sahil, Tunisia's eastern coast, the oases in the South-West and in de Gabès region.[66]
For this 'lacuna' a number of reasons can be brought forward. As in other countries of the Muslim world and in the Western world and its colonies, the process of abolition was in Tunisia a longwinded affair that was only launched in 1846. In the years following this first step the Bey's decision had to be reaffirmed a number of times. In Tunisia's National Archives there is even a 'Projet de Décret' from August 1890 stipulating anew that 'L'esclavage est entièrement aboli dans La Régence'.[67]

A second reason could be that although abolition was a wholly new phenomenon, manumission of slaves was a natural spin-off of the institute itself. The manumitted slave (*muʿattaq*) had been part of Muslim society since centuries.
In the nineteenth century the gradual process of manumission will have intensified. Many *ousfane* or *ʿabīd* stayed where they were after the abolition decree, i.e. with their former owners; they were kept within the family bonds and in a number of cases even given their family

[63] A. Larguèche, 'L'abolition de l'esclavage en Tunisie : approches pour une histoire de la communauté noire'.In : *Les Abolitions de l'esclavage de L.F. Sonthonax à V. Schoelcher 1793-1848.* Actes du Colloque international tenu à l'Université de Paris VIII, Févr. 1994, 378.

[64] L. Valensi, *Tunisian Peasants*, 238.

[65] A. Demeerseman, *Aspects de la société tunisienne d'après Ibn Abī l-Dhiyāf.*

[66] A. Larguèche, 'L'Abolition de l'esclavage', 377.

[67] Archives Nationales Tunisie. Carton 230. Dossier 421 Histoire. Doc. No.120.

names, although a strict separation was kept between the black and the white branches of the family tree… one did not mix.
The Bey liberated his own many slaves who became paid subordinates from then on.[68] A greater number than before came as free laborers in the Tunisian society whose absorbing capacity was, however, only limited. The guilds were still a 'closed shop', as before, and kept the recruitment of labor within their own ranks.

So, the 1846 abolition decree brought the slave liberation in a juridical sense, but not in a social sense as yet. Together with the process of liberation a process of deprivation and impoverishment set in for those slaves who did not have the shelter and protection of their former families. Many middle class Tunisian families experienced an economical set-back in the second half of the nineteenth century, due to Tunisia's deplorable financial situation at the time and could no longer afford to provide for their former slaves.
So, the freed slaves, men and women, ended up in the outer fringes of Tunisian society. They lived in the *funduqs*, once the thriving business centers of the foreign merchants but left by those long ago. The free slave had become a hawker, a masseur in a bath house, a peddler, a vagabond or a prostitute.

The only social safety net they could turn to was their religious brotherhood. Black slaves, once they had arrived in their new homeland had usually converted to Islam after some time. Some of them were already Muslims upon entering the country. It became one of the reasons for the Bey's decision to abolish the institute. But even if they were Muslims, their religious practice was very different from what was customary in Tunisia. They adhered to their rituals from the sub-Saharan regions and at some point in time the black slave communities had felt the need to form their own congregations. These congregations had placed themselves under the patronage of Sīdī Bilāl. Bilāl, one of the first Companions of the Prophet and his former slave, represented in their idea the ancestor of all black slaves in North Africa.

One would not have been surprised if their owners or the ruling authority had attempted to guide these black brothers and sisters in the faith to the orthodoxy of Sunni Islam. I have not found any indication in that direction, except for a letter written by Aḥmad Bābā al-Timbuktāwī, presumably a manumitted slave, who coming back in Tunis after a Mecca pilgrimage observed the manner of religious expression of his black brothers and sisters. He conveyed his feelings of disgust to his Bey Ḥammuda Pācha, begging him to take to heart in particular the circumstances of the young slave girls, who, manumitted and provided for with money by their former owners, were welcomed in the black congregation and married to one of the spirits Bori.[69]

In general, however, there seems to have been an attitude of acceptance towards this ethnic minority. The black slaves organized themselves along their ethnic affiliation: there were Dār Haussa, Dār Songhay, Dār Bournou. Some of these houses were donated to the congregations by the Bey or other members of the ruling elite as a work of piety in honor of a saint. In 1956,

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68 Rahal, *La Communauté Noire de Tunis*, 18.

69 R.Liman, 'Some Documents concerning Slavery in Tunisia at the end of the 18th Century.' *Revue d'Histoire Maghrébine* 1981, 355. 'Bori' refers here to a collective of black spirits in the invisible world, that maintains a close relationship with the believers who attribute healing powers to them. The Bori cult is of African origin, of the slaves' homeland.

there were still fourteen of these houses in the city of Tunis.[70] The *Bāsh Agha*, a black eunuch whose main function was the guarding of the Bey's harem, also served as a liaison officer between the black congregations and the administrative authorities. He took moreover an active part in the Bilāl brotherhoods, assisted, sometimes also financially, in their pilgrimages to Mecca.

In these houses the old rituals from the homeland, the Stambali and the Bori were celebrated. It is on this level of religious expression that an integration into the local population eventuated. This in particular took place through the involvement of Tunisian women in the houses of the slaves. Women's participation in religious manifestations in the mosques and elsewhere was very limited, but here, in the black congregations, they could partake in the Bori healing rites and gain a social and spiritual recognition.[71]
So, on the one hand the black *zawiya* became a place for the local Tunisian 'Dürkheimenian' religious expression, on the other hand they served as places of refuge for the black slaves from Africa.

Further Developments

Of any reactions from heads of state from other countries in the Middle East, I have not found any indication, which does not come as a surprise. In a great number of Muslim countries, like for instance Egypt, Libya and the Hijāz the slave trade presented massive economic interests: abolition of the institute and the traffic involved a long drawn and almost unmanageable process: Egypt's year of abolition is 1884, Morocco 1922, Tripolitania 1951. Mauritania only ended slavery and its trade in 1984.

In the capital of the Ottoman Empire the slave market was closed in December 1846, by decree of Sultan Abdülmecid (1839-1861). For many centuries it had been the largest market for slaves in the Empire where a steady stream of about 11,000 to 13,000 slaves per year arrived from Africa and the Caucasus.[72]

The closing of the Istanbul slave market meant the disappearance of one of the most important tourist attractions for traveling West-Europeans at the time. With it were now gone the lively descriptions that helped to shape so much of the negative image of the 'Turk' in the eyes of Europe.[73]

What seemed to be a genuine humanitarian gesture, and in line with the Sultan's *Khaṭṭ-i sherīf* of *Gülkhāne* of 1839, appeared to carry in its trail at least two detrimental effects.

Firstly, the closing of the market in no way meant the abolishing or even the suppressing of the trade: business went on as usual. Buying and selling, however, now resorted to the private

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[70] Rahal, *La Communauté Noire de Tunis*, 24.

[71] Id., 150

[72] E.R. Toledano, 'Attitude to Slavery during the Tanẓīmāt'. In: H.D. Yildiz (ed.) *150 yilinda* Tanẓīmāt. Ankara 1992, 305.

[73] E. Toledano, *The Ottoman Slave Trade and its Suppression*. Princeton (University Press) 1982, 108.

homes of the wealthy families or to the streets and inns. The market, once designed to regulate the commercial activities and prevent abuse, in cooperation with the Slave Dealers Guild, could no longer be of service to the people it was meant for in the first place: the slaves.

Secondly, the 1846-decree and subsequent restricting measures added fuel to the already mounting tensions between Istanbul and its province, the Ḥijāz, the land of the two holy cities. The slave trade was for the Meccans a lucrative business and anti-slavery measures were understood as an interference in their livelihood, the result of the dubious involvement of the Sultan with the Christians. This involvement was questioned by them on religious grounds. 'Had the Sultan become a Christian, just like the Franks'?[74]

The Sultan then drew back and wrote a defensive reply by word of his *shaykh al-Islām* Meḥmet ʿArīf Efendī.[75] The Ḥijāz was from then on exempted from measures against the slave trade issued by the Sublime Porte. Only 115 years later, in 1962, did slavery officially come to its end in the *Ḥaramayn*, the two holy cities.

A final abolition date remains diffuse in the Ottoman Empire. In '*Corps de Droit Ottoman'*, the voluminous work on Ottoman domestic legislation, published in Oxford in 1906, edited by the second secretary of the British Embassy in Istanbul, George Young, the ownership of slaves is described as 'private property' (un bien de pleine proriété, *mulk*) that could be acquired through donation, through succession or through sale, provided – and this is significant – that the sale took place between two families and not publicly: 'La vente publique et le commerce d'esclaves sont interdits depuis la suppression des marchés par Abdul Médjid, peu après son avènement.' [76] So, Erdem is right when he states that

> Slavery as a legal status and institution was never abolished in the Ottoman Empire. (…) In a way, this was necessarily so. The religious law of the Empire, the *Şeriat*, recognized and sanctioned slavery and the *Şeriat* itself, as a divine law, was considered immutable. Therefore, without a formal declaration of abolition, all Ottoman measures against slavery had to be confined to the slave trade. [77]

Confronted with the same dilemma the Tunisian *ʿulamā'* came to another solution and did give their consent. In stead of concentrating on the immutable letter of the law, they looked on a more profound level for the meaning of God's word and took the fundamental principles of His law (*qawāʿid*) as their point of departure.

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[74] W. Ochsenwald, 'Muslim-European Conflict in the Hijāz'. In: *Middle Eastern Studies* (1980), 115.

[75] Not to be confused with his predecessor 'Arīf Hikmet Bey, 'that enlightened member of the *'ulamā'* as he was called, who was also well-known to the Tunisian scholars, like al-Riyāḥī from whom 'Arīf Hikmet Bey requested an *ijāza* (an authorization, a license to quote). In: A. Abdesselem, *Les Historiens Tunisiens*, 85.

[76] G. Young, *Corps de Droit Ottoman. Receuil des Codes, Lois, Réglements, Ordonnances et Actes les plus importants du Droit Intérieur, et d'Etudes sur le Droit Coutumier de l'Empire Ottoman*. Oxford (At the Clarendon Press) 1906, II, 166.

[77] Y. Hakan Erdem, *Slavery in the Ottoman Empire and its Demise, 1800-1909*. London (MacMillan Press) 1996, 94. In his introduction (page xix) Erdem remarks: 'Perhaps it is relevant to note that there was not any special legislation against slavery during the republican times because by then there remained practically no slavery to abolish. However, the Turkish Republic became a party to the 1926 League of Nations Convention on the Suppression of Slavery by ratifying it on 5 June 1933'.

IV. *The Legitimization of the Abolition Decree*

The Bey and the Law of Islam

Ibn Abī al-Ḍyāf, the Bey's secretary and actor in the latter's inner circle we described above, is also the author of the extensive chronicle of Tunisia's nineteenth century quoted already many times in these pages, i.e. the *Itḥāf Ahl al-Zamān bi Mulūk Tūnis*. In this chronicle he gives an extensive account of the events leading up to the promulgation of the abolition decree and edits the documents in which these events are reflected.
These are the letter of Aḥmad Bey to the High Religious Council (*Majlis al-Sharʿī*), in which he lays before its members the new decree, requesting their approval and the two responsa to his letter, one of the the Ḥanafī *shaykh al-Islām* Muḥammad Bayram IV and one of the Mālikī *bāsh mufti* Ibrāhīm al-Riyāḥī.

The Bey's letter is preceded by a preamble of Bin Ḍyāf himself, in which he preludes on some of the theological points that, in his view, might be appropriate to the case. Furthermore he mentions a few reactions coming from countries in Europe. And, he devotes considerable attention to the text of an anonymous pamphlet, encouraging the abolition of slavery, issued from Malta and spread in Tunisia in the year 1845.

With the decrees of 1841, 1842 and 1846 the Bey had moved into the domain of family law, traditionally the field of the religious scholars, the *ʿulamāʾ*, more in particular the *qāḍī*. Of all the different jurisdictions in which the Bey could exercise his influence, it was exactly that of family law which belonged to the almost exclusive domain of the *sharīʿa* judge. Here, more than with any other issue, the Bey had to proceed with prudence. As his secretary recorded: 'He did not order the implementation of all measures at once, but trod gradually towards his goal.'[78]

The Bey and his entourage had many a good reason to push through this, in their eyes, important social reform. To obtain the formal approbation of the *ʿulamāʾ* was to the Bey a vital concern. Consequently, he did his utmost to pave the way and hence the carefully worded preparatory lines from the secretary's pen in the Bey's letter to the *Majlis*, the High Religious Council.

Judging from the responses of the two highest religious dignitaries of the *Majlis*, the Bey's letter could only just convince the Ḥanafī *shaykh al-Islām* Muḥammad Bayram IV and the Mālikī *bāsh mufti* Ibrāhīm al-Riyāḥī. Their fatwas are rather brief, compared to the Bey's letter and do not contain as many theological points of interest. They are certainly brief and simple when compared to two other fatwas issues in the same year, to which we shall turn in the following chapter, i.e. one on the consumption of food prepared by the Christians, also issued by Bayram IV, and one on the permissibility of the use of Eau de Cologne, by al-Riyāḥī.

And yet, the two religious officials were not averse to the Bey's program of reform themselves, but there were other, more conservative minds among their brothers in learning to be reckoned with, a fact they as well as the Bey could ill afford to ignore.

[78] See Appendix B, 159.

The Bey's arguments to convince the 'ulamā'

Brunschvig in his article on the slave *('abd)* states that Aḥmad Bey regarded slavery as 'lawful in principle, but regrettable in its consequences'. The writer does not reveal which consequences are meant here. To the modern reader there will be no doubt: slavery is a despicable phenomenon and the consequences are, at least, regrettable for the slave… However, these were not the consequences the Bey had in mind. In the Bey's perspective the slaves' owners would jeopardize their lives in the Hereafter, if they did not own their slaves, their brothers, in conformity with the rules of law and tradition.

> Where is the master owning his brother in a lawful way, as laid down by the Lord of the Messengers at the end of his life in this world and at the beginning of his life in the Hereafter? Did he not even point out to us that one of the fundamentals of his law is to anticipate on the freedom (*tashawwūf ilā al-ḥurriyya*) and the liberation (*'atq*) of the slave from his master?
>
> This being the situation and out of sympathy with the fate of these poor people in their world and that of their owners in the Hereafter, we decided to forbid the people to continue this permissible practice..[79]

Moreover, the question may be raised whether Aḥmad Bey was really convinced that slavery was 'lawful in principle': '… a right of ownership that in all probability would not hold in a legal sense. We would not grant it to whoever would claim it in our times.'[80]

Two arguments are thus brought forward by the Bey to justify the black slavery's abolition: people do not treat their slaves any longer in the appropriate manner, they do not act in accordance with the law and in agreement with the purpose of God's word. And, secondly, there is doubt concerning the legal tenability of the master's ownership of the slave.

The Abolition Decree and Qur'ān and Sunna

In order to give both arguments an exegetical basis in the sources, the Qur'ān and the Sunna of the Prophet, in which no direct and explicit reference to the abolition of slavery is to be found, the concept of *tashawwuf ilā al-ḥurriyya* , 'the aspiration, anticipation towards freedom', is introduced and specified as one of the basic principles of God's Revelation. The same terminology surfaces twice in the Malta Pamphlet:

> It belongs to the foundations of your religion that the Lawgiver did already anticipate and move into the direction of freedom and liberation.
>
> Oh, souls of purity, oh, hearts pure and sincere, oh, manners inclined towards compassion… Your law anticipates the liberation of slaves. In the ownership of human beings man is put to the greatest of tribulations.[81]

Tashawwuf is not a qur'ānic term. Neither could application of the word as a legal term be found confirmed in for instance al-Taḥānawī's Dictionary, published in about the same

[79] *Itḥāf* IV, 87. See Appendix B, 160.

[80] Id., 87. Appendix B, 160.

[81] Id., 90. Appendix B, 164.

period.[82] It raises the question how the term should be understood and interpreted. What juridical reference books were consulted by the Bey's secretary? Which Muslim scholar did he have in mind? Or was the idea to employ the term in this context an innovation on the part of the secretary himself? We have seen that in the years he was in the Bey's service, the language used in official documents had changed to a more colloquial form of Arabic. Ibn Abī al-Ḍyāf had to be creative in his articulation of concepts and notions, hitherto expressed in the clerical language of the Ottomans.[83]

A possible clue could be found in two other, in the documents often occurring notions, i.e. *maṣlaḥa* (public interest) and *qawāʿid al-sharīʿa* (principles of the law). *Maṣlaḥa* occurs twice in the Bey's letter to the *Majlis* and also twice in the fatwa of the Ḥanafī *shaykh al-Islām* Bayram IV. The term *qawāʿid al-sharīʿa* also occurs in the letter of the Bey as well as in the fatwa of Bayram IV.

Both terms may evoke associations with the work of the fourteenth-century scholar from Granada, Abū Ishāq al-Shātibī (d.1388), that regained a remarkable popularity in modern times, exactly because of his interpretation of these two legal concepts and their correlation. Especially *maṣlaḥa* has become a very wide concept in legal interpretation from the second half of the nineteenth century onwards. It has been stretched out as it were to encompass and legitimize ever more reform proposals for which there could not be found a base in Qurʾān or Sunna.

> With the expansion of the magnitude of social change affecting all departments of life, utilitarian philosophies became popular. The movement of modernism in Islam searched in the Islamic tradition for a principle that would help them grapple with the changing conditions. They found in *maṣlaḥa* such a concept. Naturally therefore more attention was paid to the study of this concept in modern times than even (sic) before.[84]

The Secretary and the Philosopher: Ibn Abī al-Ḍyāf and al-Shātibī

Al-Shātibī's name is not mentioned in either the Bey's letter to the *Majlis* or the two fatwas. Still there are a number of reasons to assume that Ibn Abī al-Ḍyāf knew his work.
One of al-Shātibī's most well-known studies, *Al-Muwāfaqāt,* was published in print for the first time in Tunis, by Aḥmad al-Wirtatānī, ʿAlī al-Shanūfī and Ṣāliḥ al-Qāʾijī in 1884.[85] So, it must have been known among these and probably other contemporaries of Ibn Abī al-Ḍyāf.

Another reason is, that although al-Shātibī's work formed no part of the regular curriculum of the Zaytūna University,[86] - as it was considered too demanding to young students - it appears

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[82] Shaykh al-Tahānawī, *A Dictionary of the Technical Terms used in the sciences of the Musalmans*. Bibliotheca Indica. Collection of Oriental Works, published by The Asiatic Society of Bengal (old series) 1862.

[83] As suggested by Prof. Dr. H'mida Enneïfer, professor at the Theological Faculty of the Université de Tunis. Oral communication. 6 April 2000.

[84] M.K. Masud, *Shātibī's Philosophy of Islamic Law*. Islamabad (Islamic Research Institute International Islamic University) 1995, 162.

[85] Id. 82. It is remarkable that none of this information is to be found in Abdesselem's extensive study, although he mentions – very shortly – the Andalusian scholar (p. 458).

[86] Oral communication Prof. Dr. H'mida Enneïfer.

to have been a topic of discussion for men of erudition, also before Ibn Abī al-Ḍyāf's time. The Mālikī *qāḍī* of Tunis Muḥammad al-Baḥrī ʿAbd al-Sattār (d. 1838) once put before the Mālikī *bāsh mufti* and early tutor of Bin al-Ḍyāf, Abū al-Fadāʾ Ismāʿil Tamīmī (d. 1832) the request to guide him into the intricacies of *Al-Muwāfaqāt*, a request that was not granted right away, though: 'First have a look at it yourself and if you run into problems, we will talk them over some evening!'[87]

Al-Muwāfaqāt, meaning 'the agreements, the similarities' was undoubtedly of particular interest to Tunisian scholars, because it reconciled the Mālikī school and the school of Abū Ḥanīfa, both operative in the country.

Al-Shātibī was a Mālikī legal philosopher from Granada in Andalusian Muslim Spain, the main source on his life and work is Sīdī Aḥmad Bābā, the sixteenth century scholar from Timbuctu, also referred to by Bayram IV (see below). To a certain extent al-Shātibī's fourteenth century Granada can be compared to Tunisia's early nineteenth century. In both periods political and economic developments having their provenance in changing patterns of power in the Mediterranean, demanded a fresh interpretation of Islamic laws.[88]

The usual methods of Muslim jurisprudence did not offer adequate possibilities to the Andalusian *fuqahāʾ* and therefore al-Shātibī reverted to more general concepts in the Muslim philosophy of law. Although in medieval times no scholar was really independent in his thinking, and could not be free from the framework of the past, al-Shātibī was more independent than others. With his employment of *maṣlaḥa* he made the *sharīʿa* nearer to the realities of life, whereas other, more conservative scholars, and also the nineteenth century Salafiyyas, tried to find solutions by returning to the old methods of the Salaf, Islam's forefathers, thereby 'putting the present in the mould of the past'.[89]

Whether the term *tashawwuf* belongs to al-Shātibī's vocabulary is still an open question; it is certainly not a term to be found among other, more traditional scholars of the schools of law. In al-Shātibī's view God had intended His law for the welfare and benefit, the *maṣlaḥa*, of man, during the time of the Revelation as well as in the future. At the time of the Revelation God had been aware of the future and had anticipated at the times ahead that were unknown to man.[90] Al-Shātibī defines *maṣlaḥa* as follows:

> I mean by *maṣlaḥa* that which concerns the subsistence of human life, the completion of man's livelihood, and the acquisition of what his emotional and intellectual qualities require of him, in an absolute sense.[91]

In this manner the term *tashawwuf* can be linked to the other terms that are mentioned in the Bey's letter, i.e. *qāʿida*, the grounding principle of God's law and *maṣlaḥa*, the welfare of man

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[87] *Itḥ āf* VII, 13.

[88] M.K. Masud, *Shātibī's Philosophy*, 86.

[89] Oral communication Professor Moh. Talbi, 7 March 2000.

[90] M.K. Masud, *Shātibī's Philosophy*, 119.

[91] Id. 151.

and his society and connected, with some reserve, to al-Shātibī's philosophy. Reserve, because after a certainly not exhaustive study, the notion could be located, but not, as yet, the term *tashawwuf*, aspiration, anticipation itself.

Slaves in the Qur'ān

If along this line of thought the concept of 'anticipation' or 'aspiration' is assigned its place, the reference in the Bey's letter to the end of the Prophet's life gains a better understanding. This could be a reference to the Prophet's last pilgrimage to Mecca, where he, in his last sermon, calls upon God as his witness that he has given His Message to the people, the Message in which freedom is one of the leading principles (*qāʿida*). It is human *ipso facto*, a universal principle.[92]
The Prophet looks ahead, as it were, to the times he will not be there anymore, he anticipates. It is in this sense that *tashawwuf* must be understood: not as a legal principle, nor as a legal-philosophical notion, but as a leading principle ((*qāʿida*) of God's Revelation. *Tashawwuf ilā al-ḥurriyya* then becomes the paradigm with which the *qur'ānic* verses on slavery may be looked at and interpreted.

> *Be kind to parents, and the near kinsman,*
> *and to orphans, and to the needy,*
> *(…)*
> *and to the traveler, and to that your*
> *right hands own.*[93]

Which were the changes in the slave's position when compared to pre-Islamic times?
We have seen that 'freedom' a key principle in the Qur'ān, became a leading principle in *sharīʿa* law, with one of the most important consequences that a Muslim could not enslave a brother or sister in the faith. The freedom principle resulted in the following changes in the social and religious status of the slave. Slaves could no longer, as had been the custom since ages, be used as prostitutes, to the financial benefit of their owners. Female slaves could, however, still be their owners' concubines:

> *And constrain not*
> *Your slave girls to prostitution, if they*
> *Desire to live in chastity, that you may*
> *seek the chance goods of the present life.*[94]

Conversion to Islam did not necessarily mean liberation, but the Muslim slave became his master's brother and a higher status was assigned to him or her than to the free unbeliever.

Furthermore encourages the Qur'ān to 'marry off' male and female slaves *(Ṣūra* 24, 32). Manumission of a slave recommended as a reparation for sins committed.[95] Finally, *Ṣūra* 24, 33, describes the explicit command to liberate the slaves but not to leave them uncared for.

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[92] N.H. Abu Zayd, *Vernieuwing in het islamitisch denken.* Amsterdam (Bulaq) 1996, 88-90.

[93] *Sūra* 4, 36(40). *Mā malakat 'aymānukum*, a standard expression for slaves.

[94] *Sūra* 24, 33(33).

[95] D. Bakker, *Man in the Qur'ān*. Amsterdam (Ph.D. Dissertation Vrije Universiteit Amsterdam) 1965, 120.

So, concluding, abolition is not mentioned but God did anticipate the slaves' liberation by already improving his and her status, by indicating freedom as a leading principle. The door to the eventual abolition of the institution in times still ahead, was put ajar already then.

The reactions of the 'Ulamā' [96]

The Fatwa of the Ḥanafī Shaykh al-Islām

From the first lines of his responsa it is obvious that the *shaykh al-Islām* Muḥammad Bayram IV can fully agree with the message conveyed in the Bey's missive. He took the tidings at heart and liberated his own slaves: '…The liberation of your servant's slaves already eventuated, in the awareness that such is the mode of conduct laid down as right and correct.'
The lines, immediately following, draw our attention; Bayram supports the beylical decision

> … In particular, as the legal grounds for the ownership of these black slaves may be questioned. Those among them who were free by origin, have become mixed up with others. Consequently, there is room for doubt with regard to each specific individual among them. To everyone familiar with the treatise of the Shaykh Sīdī Aḥmad Bābā on the issue, this should be a well-known fact.[97]

Bayram is referring here to the work *Miʿrāj al-Suʿūd ilā Nayl Ḥukm Majlub al-Sūd,* also called *Al-Kashf wa'l-Bayān li Asnāf Majlub al-Sudān*, written by Sīdī Aḥmad Bābā[98], a Mālikī scholar from Timbuctu (in present day Mali) whom we just met as one of the biographers of Al-Shātibī.

In answer to questions from scholars in Tuat, in southern Algeria, he wrote a fatwa in 1615, in which he indicated in great detail which categories of individuals could be acquired as slaves according to the law. Tuat was a station on an important transit route for the slave caravans to the North and the Tuat scholars saw many of these poor creatures in their daily environment. Quite often the slaves claimed to be Muslim and doubts were raised among the scholars whether they could be bought and sold as slaves. To Sīdī Aḥmad Bābā there could be only one reason for slavery and that was unbelief (*kufr*):

> The answer to this is that you should know that the reason for slavery is non-belief and the Sudanese non-believers are like other *kāfir* whether they are Christians, Jews, Persians, Berbers or any others who stick to non-belief and do not embrace Islam (…) This means that there is no difference between all the *kāfir* in this respect. Whoever is captured in a condition of non-belief, it is legal to own him, whosoever he may be, but not he who was converted to Islam voluntarily from the beginning, whether [he be] from Bornu, Kano, Songhai (…). These are free Muslims whose enslavement is not allowed in any way.[99]

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[96] In two recent publications in which the abolition of slavery in Tunisia is mentioned, the authors restrict themselves to the Bey's letter of the *Majlis* requesting the *'ulamā's* approval, without, however, providing the latter's reactions. The publications referred to here are: J. Hunwick and E.T. Powell, *The African Diaspora in the Mediterranean Lands of Islam.* Princeton (Markus Wiener Publishers) 2002. And: W.G. Clarence-Smith, *Islam and the Abolition of Slavery.* London (Hurst & Company) 2006.

[97] *Ithāf* IV 88. Appendix B, 161.

[98] Abū 'l-Abbās Ahmad b. Ahmad al-Takrūrī al-Massūfī (1556-1627).

[99] J.R. Willis, *Slaves and Slavery in Muslim Africa*. Vol.I: *Islam and the Ideology of Enslavement*. London (Cass) 1985, 125.

The doubts that arose among the Tuat scholars also seized Bayram IV. It was commonly known in Tunisia that there were brothers and sisters in the faith among the slaves arriving from the South:

> Les hommes et les femmes sont voilés à Tuwerga de la manière suivante [in the original text two illustrations], ce peuple est Mahometan ; une femme qui est née le jour du Bairam se nommée Tafaki. Les Tuwergi ont un Chef dont le pouvoir est limité par un Conseil. (…) Ce sont les Godemschi qui viennent acheter les nègres et les négresses de Tuwerga. (…) Que dans les Bourgades les blancs ont des habitations séparées de celles des noires. Ils font le commerce des nègres par exchange et leur Caravane n'étant pas embarrassé en allant.
> Ce commerce de chair humaine ne se fait pas toujours sans rixes (sic) et désordres ; tous ne veulent pas vendre leur enfants dont en quelque façon le Chef et le Conseil disposent.[100]

Moreover, we have seen that members of the urban elite donated funds for the purchase and upkeep of the black community's *zawiyas*.

The Fatwa of the Mālikī Bāsh Mufti

From Abū Isḥāq Ibrāhīm al-Riyāḥī's reaction can be understood he, like his Ḥanafī counterpart, does not have any objections to the Bey's proposal, on the contrary,

> '….he rejoices in the letter's contents: it reflects your right judgment with respect to the liberation of these slaves, viewed from different aspects. It will be met with approval by everyone endowed with commonsense and knowledgeable of the facts in these matters'.[101]

In some brief sentences he further indicates that '…nothing needs to be added to your exposition. Through your good offices the community of Islam continues to enhance its splendor and through your good governance the Dynasty gains in prosperity.'

We must assume that the contents of the Bey's letter did not hold any news for him. Before the announcement reached the *Majlis*, the discussion on the pros and cons of the decree will have taken place elsewhere. If al-Riyāḥī had any comments to make he would have spoken his mind there and then. Although he must be considered one of Tunisia's most enlightened minds at the time – Khayr al-Dīn would later describe him as 'the pride of the continent of Africa, the dawn of true guidance'[102] – it is hard to imagine that he would not have had any critical footnotes at this far-reaching social reform, although as a Sufi he must have been alive to the quality of human life. Al-Riyāḥī was the grand old man, not only of the Bey's advisers, but of the entire city of Tunis. He was the founder of the Tijāniyya Brotherhood in Tunisia. More than once he fulfilled the traditional role of the *ʿālim* as critical questioner. He, for instance, in his sermon made allusions to governmental actions he did not approve of, namely the Bey's concession monopolies granted to the European businessmen as these had a

[100] J.E. Humbert (1771-1839): Recueil No. 19 (26th May 1782) : H.T.C. 190: 89. Archives 'Rijksmuseum voor Oudheden' Leiden (Netherlands). Jean Emile Humbert was a Dutch engineer, in the service of Ḥammūda Pācha Bey (1782-1814). He was the younger brother of David, who by the name of David Giottin Humbert de Superville acquired fame as a painter. David was also (as from 1825) the first director of the Print Room of the Leiden University.

[101] *Itḥāf* IV, 88. Appendix B, 161.

[102] L.C. Brown, *The Surest Path*, 116
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detrimental effect upon the Tunisian merchants.[103] He was almost eighty years old when he issued his fatwa.

At this point the question may be raised why none of the three scholars, Bayram IV, Ibn al-Ḍyāf and al-Riyāḥī reverted to the *Risāla fī-'l-Siyāsāt al-Sharʿiyya* by Bayram I of the first chapter, in which not only the legal concept of public interest or general welfare (*maṣlaḥa*) employed by first two, is discussed, but which by the clear exposition of the head of state's prerogatives could have indicated an avenue to facilitate reform. Could not al-Qarāfī's ideas on issues of general welfare and accommodation of change have served Tunisia's scholars fifty years later as well? Was not the concept of *siyāsa sharʿiyya* itself the one instrument to give the Bey a free hand?

To my mind, Bayram's treatise was viewed by the scholars of the mid-nineteenth century as a work on the role of the head of state. Certainly by Ibn al-Ḍyāf it was primarily understood as an instrument to serve the Bey Ḥammūda Pācha in his problems with the tribes in the south. It must have been clear to all parties concerned that the abolition of slavery was a completely different affair, demanding also a wholly different approach.

The Malta Pamphlet

The Pamphlet is until further research proves otherwise, anonymous. It had no official status as it was not issued from any of the beylical offices. Investigation into the theological backgrounds of the abolition decree and its context could have ended with al-Riyāḥī's words just mentioned. It strikes us as remarkable, however, that in the Pamphlet references to the Qurʾān and to the Sunna which are practically absent in the letter and the fatwas, are here abundantly present. It is this characteristic that sets the Pamphlet apart from the other documents: out of a strong sense of tradition and a deep respect for precedent[104] the *fuqahāʾ* seldom quoted directly from the two sources and rather referred to the authoritative views of their learned colleagues in the past, as is the case in the Bey's letter and the two fatwas.

It is therefore exactly the anonymity of the 'non-*faqīh*' that confronts us with some intriguing questions. Who was the man behind the Pamphlet? Was it composed in Tunis, only to be printed in Malta and from there distributed? According to Ibn Abī al-Ḍyāf the pamphlet 'was attributed to a person from one of the European countries'.[105] More than twenty years later these same words are quoted in a letter of General Ḥusayn Pācha to Amos Perry, the American consul in Tunis[106] with the only difference that the author is now 'a distinguished man of letters in our country'. The question may be raised whether we are dealing here with an anonymous writer or with a secret that, for whatever reason, had to be kept. Given these circumstances, any attempt at unraveling the Pamphlet's mystery must be purely speculative.

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[103] L.C. Brown, *Tunisia Ahmad Bey*, 169-170, n. 55.

[104] A.H. de Groot, 'The Historical Development of the Capitulatory Regime in the Ottoman Middle East from the Fifteenth to the Nineteenth Century'. *Oriento Moderno* 3-2003, 575.

[105] *Itḥāf* IV, 88.

[106] R. Khuri, *Modern Arab Thought: Channels of the French Revolution to the Arab East*. Princeton (The Kingston Press) 1983, 152.

The combination 'man of letters', 'from one of the European countries' and 'a distinguished man of letters in our country' leads the trail to two persons who were at the time the abolition decree was in preparation off and on in Malta, the first is Fāris al-Shidyāq (1804-1887), the second James Richardson (1806-1851).

Fāris al-Shidyāq was a Christian, a Maronite, born in ʿAshqut, in Lebanon. He became a Protestant and worked for the Protestant Evangelical Mission, first in Beirut, later in Cairo.[107] In 1834 he was transferred by the Mission to Malta. Initially he worked as a teacher in Arabic for the Mission and for a British government school. He was also director of the newly installed printing office, in 1838. Also there in operation was an Arabic press, that had a brief but lively period of activity; al-Shidyāq had a hand in all their publications.[108] Malta was his place of residence until 1848. From there he visited Tunis in 1841/1842 and went for a longer trip to England. In the early forties there were already contacts with the beylical Court in Le Bardo. He read European papers for the Bey and for the first minister Mustafa Khaznadār[109] and translated relevant articles for them. In the year 1845, the year in which the Malta Pamphlet was distributed, al-Shidyāq was in London, only to return in 1846, after the definite promulgation of the abolition decree in the early weeks of the same year…
Contacts with Le Bardo seem to have intensified after the Bey's journey to Paris in 1846, but certainly after 1855. In that year he came once more to Tunis and converted to Islam, and was from then on called Aḥmad Fāris al-Shidyāq.[110] In July 1860 he founded the weekly paper *Al-Jawā'ib* in Istanbul. He published several books and articles, among which one on the inhumanity of - white - slavery.[111]

James Richardson was one of the representatives of the British and Foreign Anti-Slavery Society (established in London in 1839). He was sent to Malta in 1839 to conduct from there a campaign in Tunis, Morocco and present-day Libya.[112] In the years 1845 and 1846 he made a nine months' trip along some of the most well-known slave trade stations and visited Ghadames, Ghat, the Fezzan and Mourzouk, his principal object being 'to ascertain how and to what extent the Saharan slave trade was carried on.'[113] On the 16th of April 1842, he wrote from Malta to the secretary of the Society in London, John Harfield Tredgold,

> I have much pleasure in forwarding you a Circular (ably published through Africa by Colonel Warrington).[114] I have had the Arabic translation lithographed for him in Malta.

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[107] EI_2, II, 800.

[108] A,J. Arberry, 'Fresh Light on Aḥmad Faris al-Shidyak'. *Islamic Culture*. Vol. XXVII,1952, 155.

[109] A. Abdesselem, *Historiens Tunisiens*, 115.

[110] B. Tlili, *Les Rapports Culturels et Idéologiques entre l'Orient et l'Occident, en Tunisie, au XIXe Siècle (1830-1880).* Publications de l'Universitéde Tunis. 1974 , 301.

[111] F. Tarabolsi and A. Al-Azmeh, *Silsila al-'Amāli al-Majhūla Fāris al-Shidyāq*. (*The Unknown Works of Fāris al-Shidyāq)* London (Riad El-Rayyes Books Ltd) 1995, 240.

[112] M. Ennaji and K. Ben Shrir, 'La Grande Bretagne et l'esclavage au Maroc au XIXe siècle.' *Hespéris Tamuda* 1991 Vol. XXIX, 249-281.

[113] James Richardson, *Travels in the Great Desert of Sahara in the years of 1845 and 1846.* London (R. Bently), 1848. Two Volumes, Vol. I, xii.

[114] The English consul in Tripoli.

> Do you not think that something might be done with Mehmet Ali? Could not the Committee prepare an address to this extraordinary man? M.A. has always shown himself alive to the requests of private English gentlemen, however, he may have resisted the summons [?] to evacuate Syria. I think seriously about appealing to the common feelings of humanity in this great man.
> I doubt not that in Malta we can help them in their efforts to persuade Mr. Pacha to abolish slavery. Perhaps the less government have to do with it the better.
>
> [scribbled at the bottom:] Slavery no longer exists in the Tunisian Dominions.[115]

Richardson had a fair command of Arabic, as becomes clear from his traveling journal. He resided in Malta at the same time as al-Shidyāq and there can be no doubt that the two knew each other: Richardson established the newspaper 'The Malta Times' in those years.

Considering all, both seem to be likely candidates. The abundance of *qur'ānic* quotations in the Pamphlet might point in the direction of al-Shidyāq as the author, even if it was written long before the time he converted to Islam. As for Richardson, it might well have been one of the policies of the British and Foreign Anti-Slavery Society to meet the Muslim rulers on their own religious terms. Was the Malta Pamphlet 'the Circular ably published through Africa'? It might even have been a joint effort by both gentlemen.

Either choice, however, leaves unresolved how the terminology that seems to be specific for the letter to the *Majlis,* also turns up in the Pamphlet, and … in 1845, one year before the final abolition decree was promulgated. To make matters even more complicated, in his chronicle Ibn Abī al-Ḍyāf recorded that he was given the order to compose the letter after the second phase of the abolition process, in 1842. His letter, and both fatwas for that matter, bear, however, the same date, i.e. the early days of Muharram 1262, i.e. January 1846 …. The anonymity of the Pamphlet, so it seems, will have to remain unrevealed.

Whoever its author, the Pamphlet's text challenges us to further scrutiny. A number of similarities with the Bey's letter and the fatwa of Bayram IV catches the eye. First of all, as we indicated before, the term *tashawwuf ilā al-ḥurriyya*, aspiration or anticipation to freedom, is found twice in the Pamphlet. But also other notions that are fundamental to the argumentation in the letter to the *Majlis*, turn up here, i.e.

> There is no objection to abstain from this matter – which is in fact permitted – as it leads to things forbidden. Permissibility is the lifting of restriction. However, this lifting does not imply an order to practice it, [116]

corresponds with the letter's second paragraph. The words, 'his last admonition to you was at the time of his passage to the High Council (*al-malā' al-aʿlā*)',[117] appears in the first lines of the letter. More than in the letter, however, the idea that all men are brothers, children of Adam, is emphasized.
We might even hear a faint echo of the Maghribī Khārijite past in the words on the second page of the Pamphlet: 'In principle, his brother in Adam is qualified to hold the office even of

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[115] Guides to the Papers of the Anti-Slavery Society. C9/128. Rhodes House, London.
Colonel Warrington was the British consul of Tripoli. He and Richardson visited Mehmet Ali Pacha, the Ottoman governor in Tripoli in May 1845. Slavery was abolished in that country in 1951.

[116] Appendix B, 164.

[117] Appendix B, 163.

prophet or caliph …'. Was not an 'Ethiopian slave just as qualified for the caliphate as a son of the noblest clans'? [118]

The reference made to Qāḍī ʿIyāḍ al-Sabtī places the Pamphlet in a genuinely Maghribī and Tunisian context. Qāḍī ʿIyāḍ (1088-1149) was a famous Moroccan judge of Andalusian origin. His *Kitāb al-Ghunya* occurs many times in Bayram's treatise, the subject of the first chapter.[119] Another work *Kitāb al-Shifāʾ bi-taʿrīf ḥuqūq al-Muṣṭafā* had among the learned as well as the illiterate masses an adulation that could only be compared to the *Ṣaḥīḥ* of al-Bukhārī. It was the object of pious lectures, often during Ramaḍān celebrations. Women used to take the oath while holding on to Qāḍī ʿIyāḍ's book.[120] We can only assume that to mention it here, in the Pamphlet, was a well-considered attempt at persuasion.

An in my view remarkable divergence from the letter to the *Majlis* is the fact that the Pamphlet goes back to the original *qur'ānic* justification for enslavement, the humane divergence from the pre-Islamic period, namely not to kill your prisoners of war, but to save their lives: 'It is not for any Prophet to have prisoners…..''. and to offer them the prospect of life with a new faith, as becomes clear in the following lines of the same *ṣūra,* however not mentioned in the Pamphlet:

> O, Prophet, say to the prisoners in your hands:
> 'If God knows of any good in your hearts
> He will give you better [=the faith] than what has been taken [=the ransom].

We have seen that in later centuries when armed confrontations with the infidel were few, prisoners of war became a negligible category. The justifications for human beings eligible for capture and enslavement widened and all infidel, whether prisoners or war or not, could be enslaved. *Kufr* , unbelief was Sīdī Bābā's sole argument.

The Letter of General Ḥusayn Pācha[121]

Ten years after Aḥmad Bey's abolition decree a curious incident took place in Paris, whereby one of Tunisia's nineteenth-century' reformers was involved. The incident led to a renewed formulation of the Tunisian view on slavery and its abolition.

In the spring of 1856 the Tunisian general Ḥusayn Pācha, in the company of a black young man, visited the Opéra in Paris. An American, also present, reacted with outrage, weaved his way to the black man, harassed him and yelled at Ḥusayn Pācha: 'What is this black slave doing here? Since when do you give permission to slaves to sit next to their masters?' Ḥusayn appeared to be well acquainted with circumstances in the United States and retorted: 'Take it easy my friend, we are in Paris and not in Richmond!'

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118 I. Goldziher, *Introduction to Islamic Theology and Law*. Princeton (University Press) 1981, 171.

119 Appendix A, 127.

120A. Abdesselem, *Les Historiens Tunisiens*, 177.

121R. Khuri, *Modern Arab Thought*, 152.

Ḥusayn Pācha was, like Khayr al-Dīn, a *mamluk* from the area of the Black Sea. In the period immediately preceding the French take over in 1881, he held a number of important posts in the Tunisian government. Between 1853 and 1856 he was, by order of the Bey, for a longer period in Paris, together with Khayr al-Dīn.

After the incident – seven years later - Ḥusayn Pācha explains in a letter to the American consul, Amos Perry, the Tunisian ideas on slavery and its abolition. In Ḥusayn Pācha's argumentation one of Aḥmad Bey decisive premises has disappeared, i.e. the concern for the slave owners' life in the Hereafter. According to Ḥusayn Pācha slavery was during the Prophet's life an accepted institution. The right of ownership was, however, made conditional on certain provisions and obligations; the slave had to be treated well, a condition that appeared to be hard to fulfill, even in a time the Muslim faith was at its zenith. It became even more difficult in the present time where religion had lost so much of its influence and many failed to live according to God's word. Too much harm was inflicted on the slave, still according to Ḥusayn Pācha, and therefore the only solution left was to liberate them. So far the writer seems to follow the 1846 reasoning.

Ḥusayn Pācha mentions an argument that was not brought forward by the Bey, an argument of a political- economical nature (*al-iqtiṣād al-siyāsi*): 'Countries where full liberty exists and no enslavement is permitted are more prosperous than other countries', a contention also prevailing in circles of the European anti-slavery societies. [122]

Conclusion

It took five years for the Tunisian abolition decree to come to its conclusion: 1841, 1842 and 1846. It can be established that in the case of the 1842 and 1846 decrees, there was an immediate cause: in 1842 a slave's attempt to seek asylum in the French consulate, and in 1846 a serious conflict of jurisdiction between the Bey and the English consul, Sir Thomas Reade. One could even suggest that the date of both decisions was prompted by pragmatic considerations. However, the important initial step had then already been taken, in 1841. Concerning the pressure from overseas: the English consul, Sir Thomas Reade will have brought up the issue of slavery and its abolition during one of his audiences at court. The English abolitionists were a powerful and active lobbying group, that worked hard at influencing their overseas contacts. There seems to be, however, no question of strong pressure put upon the Bey by any of the two leading European powers as is also shown by the French consul's surprised reaction.

Moreover, are there not his secretary's avouching observations that this Bey 'clearly possessed a natural inclination towards a civilization that holds freedom as its true core and foundation'? Two years before the Bey took his initial step, in 1839, he had already become a member of the 'Institut d' Afrique'. An incentive might even have been his mother's past as a Christian slave girl. The Bey is known to have held her in high esteem as an adviser and companion.

Irrespective of the strength of the presumed foreign influence, the words of the consul or the man from Malta must have fallen in good earth. They fell upon deaf ears in the case of the Moroccan Sultan and also in the case of the Sultan's representative in Tripoli. Both were

[122] R. Reinsma, *Een merkwaardige episode*, 10.

approached in much the same way: Morocco only abolished slavery and its trade in 1922. For Tripolitania the year is 1951.
The abolition decree must be appreciated as an independent initiative, an attempt by the Bey to put himself in a strong position *vis à vis* the West European powers and the Sultan in Istanbul. The ruling elite in Le Bardo Palace still lived in the first half of the nineteenth century with the hopeful expectations that their initiatives for reform would carry through. From the military school started in 1843, replacing the palace education for princes and *mamluks*, would issue within a few years, the first thirty to forty well-trained officers.

The most important argument against theories of foreign intervention is the political situation in Tunisia in 1841. Before the middle of the nineteenth century there was European influence like there had always been in Tunisia. There were indications of a stronger European encroachment, the consuls of the European expansionist states demanded ever more trading concessions, there was the problem of the European immigrants' swelling numbers … However, despite these problems the Bey still had a firm grip on the situation. His plans were promptly carried out, his ideas for reform moved into action. In short, Tunisia was functioning as it had always done, carefully winding its way between Western Europe and Istanbul, self-assured and determined at the same time. One could even say that for those reasons the abolition of slavery could only take place at that particular time. The Bey was enlightened in his thinking, yet in the handling of his country's affairs he still was an – almost – absolute ruler.

Only by the end of the 1840s a change in the centuries' old balance of power between Tunisia and its neighbors around the old world sea was creeping in. The Western consuls' strong demands for commercial privileges left him hardly any chance to defend his own interests. In 1857 a French squadron took up moorings at La Goulette, the Tunis harbor…. to leave no misunderstanding about the expansionist schemes France had in mind. Then there was explicit foreign intervention. One of the Bey's most important motives for the abolition decree was, indeed, to stem this rising tide of 'overwhelming influence'. It was to prevent the slaves running off to the foreign consulates, putting the Bey in an embarrassing predicament. The abolition decree had to demonstrate to Paris, to London and also to Istanbul that the Bey had his own agenda when it came to modernization and reform.

Summarizing, two arguments for the Tunisian abolition decree emerge, i.e.

Firstly, a political argument aimed at the foreign powers: to the West as well as to the East had to be demonstrated that modern reforms were high on the Tunisian agenda 'he held the view that it would convince those striving for social reforms'.

Secondly, an domestic political argument: slaves fled the Bey's authority with their pleas for asylum at the foreign consulates.

Subsequently, in a letter requesting approbation of the decree to the High Religious Council both these arguments are given a juridico-theological justification in the following manner:

Holding on to the law in a manner never intended by God may jeopardize the life in the Hereafter of the slave owners.

There is reason for doubt concerning the slave's status in many cases. The majority of them are Muslim and therefore cannot – *de jure* – be enslaved.

From a juridico-theological perspective the abolition of slavery, and more in particular the justifications given to the decree, pertain to a very early phase of modern Qurʾān interpretation. As early as 1841 a creative proof of *ijtihād*, of independent theological reasoning, was presented to legitimize a social reform that strongly interfered in social and cultural patterns in Tunisia's society. Moreover, this example of reasoning emerged from the Bey's palace and not from the study of one of the Tunisian *ʿulamāʾ*. The new interpretation of the prescripts in the Qurʿān on slavery finally released this pre-Islamic custom from the shackles of its theological determination. It did so by the application of the newly coined term of aspiration towards freedom, that had its provenance in a classical source of Muslim legal philosophy.

An important distinguishing feature when drawing a comparison with reformist documents from the second half of the nineteenth century is the absence of any apologetics. Tunisian thinkers had not yet become prisoners of the polemics with the West. Ibn Abī al-Ḍyāf, both religious dignitaries and even the Malta writer did not act in reaction to European assertions but kept strictly within their Islamic theological context. Bayram IV referred to the doubt apparently existing since many centuries among Muslim scholars, which now could be removed. The abolition of slavery in Tunisia may well be considered as an interesting case study in the development of Islamic thought in modern times. Further study might even reveal this example of theological ingenuity to be the most remarkable aspect of a piece of legislation that took another few decades to be fully implemented.

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